

**Chiappe Building Maintenance Co. d/b/a Pioneer Building Maintenance Company and Falcon Building Maintenance, Inc. and Service Employees International Union, Local 1877, AFL-CIO, CLC. Case 32-CA-12099**

February 28, 1992

**DECISION AND ORDER**

BY MEMBERS DEVANEY, OVIATT, AND  
RAUDABAUGH

Upon a charge filed by the Union on October 8, 1991, and an amended charge filed on October 9, 1991, the General Counsel of the National Labor Relations Board issued a complaint against Chiappe Building Maintenance Co. d/b/a Pioneer Building Maintenance Company and Falcon Building Maintenance, Inc., the Respondent, alleging that it has violated Section 8(a)(5), (3), and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On December 2, 1991, the General Counsel filed a Motion for Summary Judgment. On December 5, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that counsel for the General Counsel, by letter dated November 14, 1991, notified the Respondent that unless an answer was received by close of business on November 21, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent, collectively California corporations, has been engaged in the business of providing janitorial services to office buildings from its facility in Santa Clara, California, where during the 12 months preceding issuance of the complaint, in the course and conduct of its business operations, it sold and shipped goods or provided services valued in excess of \$50,000 directly to customers or business enterprises who themselves meet one of the Board's jurisdictional standards, other than the indirect inflow or indirect outflow standards. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

**A. Alleged 8(a)(1) and (5) Violations**

Since about August 4, 1989, the Union has been the designated exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part time janitors, waxers, utility persons, maintenance technicians, and window cleaners employed by Respondent in or out of its main offices located at 3233 De La Cruz Boulevard, #3, Santa Clara, California; excluding all other employees, guards, and supervisors as defined in the Act.

By virtue of Section 9(a) of the Act, the Union, at all times since that date, has been, and is now, the exclusive representative of the unit employees for the purposes of collective bargaining regarding rates of pay, wages, hours of employment, and other terms and conditions of employment. Recognition has been embodied in a collective-bargaining agreement which was effective by its terms until November 30, 1990.

The Respondent has engaged in the following acts and conduct:<sup>1</sup>

(1) On or about October 1, 1991, acting through its owner, Lewis Gallimore, at its Santa Clara, California facility, the Respondent:

<sup>1</sup> We find that at all material times, the following individuals occupied the indicated positions, and that they are now, and have been at all material times, supervisors of the Respondent within the meaning of Sec. 2(11) of the Act and agents of the Respondent within the meaning of Sec. 2(13) of the Act: Lewis Gallimore, owner of the Respondent; Carmelo Patino, managing supervisor; and Rene Velasquez, janitor supervisor.

(i) Told employees that if they did not like working without a union they should cease their employment with the Respondent.

(ii) Threatened to terminate any employee who was involved in trying to obtain union representation for the Respondent's employees.

(iii) Threatened to fire an employee because the employee associated with an employee who supported the Union.

(iv) Told employees they should deal with the Respondent directly and not go through the Union.

(2) On or about October 1, 1991, acting through Janitor Supervisor Rene Velasquez at its Santa Clara, California facility, the Respondent told an employee that employees who had spoken with Gallimore earlier in the day concerning the Union would end up "without work."

(3) On or about October 1, 1991, acting through Lewis Gallimore at its Santa Clara, California facility, the Respondent coerced employees by physically removing a union representative from the Respondent's premises in the presence of employees.

(4) On or about October 1, 1991, acting through Lewis Gallimore at the Digital Equipment Corporation cafeteria, the Respondent:

(i) Interrogated employees concerning their union activities.

(ii) Told employees that if they wanted a union they should look for a union company because the Respondent was not going to have a union.

(iii) Impliedly coerced employees not to support the Union by promising employees a pay raise on their anniversary date.

(iv) Told employees that the Respondent could fire them all, but that the Respondent would only fire those who continued with the Union.

(v) Told employees they should deal with the Respondent directly and not go through the Union.

(5) On or about October 2, 1991, acting through Rene Velasquez at the Digital Equipment Corporation jobsite, the Respondent informed an employee that the Respondent could fire employees if they continued to support the Union.

(6) On or about October 7, 1992, acting through Managing Supervisor Carmelo Patino, by telephone, the Respondent told an employee that the employee was out of work because the employee had continued to support the Union.

(7) On or about October 10, 1991, acting through Carmelo Patino at a residence in San Jose, California, the Respondent told an employee that the employees had been warned that they would be fired if they went to the Union.

We find that each of the acts described above constitutes unlawful interference, restraint, and co-

ercion of employees in the exercise of the rights guaranteed them by Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

We further find that by each of the acts described in paragraphs 4(iii) and (v) above the Respondent has failed and refused, and is failing and refusing, to bargain collectively and in good faith with the Union as the exclusive representative of the unit employees in violation of Section 8(a)(5) and (1) of the Act.

#### *B. Alleged 8(a)(3) and (1) Violations*

On or about the dates set forth below, the Respondent discharged the following employees:

Feliciano Banos	October 1, 1991
Juan Antonio Perez	October 1, 1991
Alfredo B. Navarro	October 3, 1991
Ramiro Garcia	October 4, 1991
Plancarte	
Guillermina Patino	October 6, 1991
de Andrade	

Since those dates, the Respondent has failed and refused, and continues to fail and refuse, to reinstate the employees to their former positions of employment.

The Respondent engaged in the conduct described above because the employees joined, supported, or assisted the Union and engaged in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and in order to discourage employees from engaging in these activities.

We find that each of the Respondent's acts described above constitutes unlawful discrimination in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(3) and (1) of the Act.

#### CONCLUSIONS OF LAW

1. By telling employees that if they did not like working without a union they should cease their employment with the Respondent; threatening to terminate any employee who was involved in trying to obtain union representation for the Respondent's employees; threatening to fire an employee because the employee associated with an employee who supported the Union; telling employees they should deal with the Respondent directly and not go through the Union; telling an employee that employees who had spoken with the Respondent's owner, Lewis Gallimore, concerning the Union would end up "without work"; coercing employees by physically removing a union representative from the Respondent's premises in the

presence of employees; interrogating employees concerning their union activities; telling employees that if they wanted a union they should look for a union company because the Respondent was not going to have a union; impliedly coercing employees not to support the Union by promising employees a pay raise on their anniversary date; telling employees that the Respondent could fire them all, but that it would only fire those who continued with the Union; informing employees that the Respondent could fire employees if they continued to support the Union; telling an employee that the employee was out of work because the employee had continued to support the Union; and telling an employee that the employees had been warned that they would be fired if they went to the Union, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By impliedly coercing employees not to support the Union by promising employees a pay raise on their anniversary date, and by telling employees that they should deal with the Respondent directly and not go through the Union, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

3. By discharging and failing to reinstate employees Feliciano Banos, Juan Antonio Perez, Alfredo B. Navarro, Ramiro Garcia Plancarte, and Guillermina Patino de Andrade because of their activities on behalf of the Union, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent, inter alia, to offer Feliciano Banos, Juan Antonio Perez, Alfredo B. Navarro, Ramiro Garcia Plancarte, and Guillermina Patino de Andrade immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights or privileges previously enjoyed, and to make them whole for any losses of earnings and other benefits they may have suffered as a result of the discrimination against them. Backpay for the above-named employees shall be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289

(1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

#### ORDER

The National Labor Relations Board orders that the Respondent, Chiappe Building Maintenance Co. d/b/a Pioneer Building Maintenance Company and Falcon Building Maintenance, Inc., Santa Clara, California, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Telling employees that if they did not like working without a union they should cease their employment with the Respondent.

(b) Threatening to terminate any employee who was involved in trying to obtain union representation for its employees.

(c) Threatening to fire employees because they associated with an employee who supported the Union.

(d) Telling employees they should deal with it directly and not go through the Union.

(e) Telling employees that employees who spoke with its owner, Lewis Gallimore, concerning the Union would end up "without work."

(f) Coercing employees by physically removing a union representative from its premises in the presence of employees.

(g) Interrogating employees concerning their union activities.

(h) Telling employees that if they wanted a union they should look for a union company because it was not going to have a union.

(i) Impliedly coercing employees not to support the Union by promising employees a pay raise on their anniversary date.

(j) Telling employees that it could fire them all, but that it would only fire those who continued with the Union.

(k) Telling employees they should deal with the Respondent directly and not go through the Union.

(l) Informing employees that it could fire them if they continued to support the Union.

(m) Telling employees that they were out of work because the employees had continued to support the Union.

(n) Telling employees that they had been warned that they would be fired if they went to the Union.

(o) Failing and refusing to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of the unit employees.

(p) Discharging and failing or refusing to reinstate, or otherwise discriminating against employees, because of their activities on behalf of the Union.

(q) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer employees Feliciano Banos, Juan Antonio Perez, Alfredo B. Navarro, Ramiro Garcia Plancarte, and Guillermina Patino de Andrade immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights or privileges previously enjoyed, and make them whole with interest for any losses of earnings and other benefits suffered by reason of the unlawful discrimination against them as set forth in the remedy section of this decision.

(b) Remove from its files any reference to the unlawful discharges of Feliciano Banos, Juan Antonio Perez, Alfredo B. Navarro, Ramiro Garcia Plancarte, and Guillermina Patino de Andrade and notify them in writing that this has been done and that evidence of the unlawful discharges will not be used as a basis for future personnel actions against them.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) On request, bargain with the Union as the exclusive representative of the employees in the appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody the understanding in a written agreement.

(e) Post at its facility in Santa Clara, California, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

## APPENDIX

### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT tell employees that if they do not like working without a union they should cease their employment with this Company.

WE WILL NOT threaten to terminate any employee who is involved in trying to obtain union representation for our employees.

WE WILL NOT threaten to fire employees because they associate with employees who support the Union.

WE WILL NOT tell employees they should deal directly with us and not go through the Union.

WE WILL NOT tell employees that employees who speak with our representatives concerning the Union will end up "without work."

WE WILL NOT coerce employees by physically removing union representatives from our premises in the presence of employees.

WE WILL NOT interrogate employees concerning their union activities.

WE WILL NOT tell employees that if they want a union they should look for a union company because we are not going to have a union.

WE WILL NOT impliedly coerce employees not to support the Union by promising employees a pay raise on their anniversary date.

WE WILL NOT tell employees that we can fire all employees but will only fire those who continue with the Union.

WE WILL NOT inform employees that we can fire employees if they continue to support the Union.

WE WILL NOT tell employees that they are out of work because they support the Union.

WE WILL NOT tell employees that they have been warned they will be fired if they go to the Union.

WE WILL NOT fail and refuse to bargain in good faith with the Union as the exclusive representative of the unit employees.

WE WILL NOT discharge or otherwise discriminate against employees because of their activities on behalf of the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer employees Feliciano Banos, Juan Antonio Perez, Alfredo B. Navarro, Ramiro Garcia Plancarte, and Guillermina Patino de Andrade immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights or privileges previously enjoyed; and we will make them whole, with interest, for any losses of earnings and other benefits suffered by reason of our unlawful discrimination against them.

WE WILL remove from our files any reference to the unlawful discharges of Feliciano Banos, Juan

Antonio Perez, Alfredo B. Navarro, Ramiro Garcia Plancarte, and Guillermina Patino de Andrade and notify them in writing that this has been done and that evidence of the unlawful discharges will not be used as a basis for future personnel actions against them.

WE WILL, on request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in an agreement:

All full-time and regular part time janitors, waxers, utility persons, maintenance technicians, and window cleaners employed by us in or out of our main offices located at 3233 De La Cruz Boulevard, #3, Santa Clara, California; excluding all other employees, guards, and supervisors as defined in the Act.

CHIAPPE BUILDING MAINTENANCE  
CO. D/B/A PIONEER BUILDING MAIN-  
TENANCE COMPANY AND FALCON  
BUILDING MAINTENANCE, INC.